IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/52265/2015-CU[DB]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/131-A/14-15 dated 11/02/2015passed by Commissioner of Central Excise (Appeals-I), Meerut)

M/s I2K2 Networks Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Mrs Santosh Khandelwal, Authorised Representative for Appellant
Shri Mohammad Altaf, Assistant, Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/02/2018
Date of Decision : 21/02/2018

FINAL ORDER NO- **70824 / 2018**

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/131-A/14-15 dated 11/02/2015 passed by Commissioner of Central Excise (Appeals-I), Meerut.

2. The brief facts of the case are that the appellants were receiving services of Bandwidth Charges and were required to pay service tax of Rs.6,25,269/- under reverse charge mechanism. Further, they were also providing "Web Hosting

Service" for which they were required to pay service tax. They were issued with show cause notice dated 25.03.2013 wherein there were proposals to appropriate service tax amounting to Rs.6,25,269/- and interest of Rs.2,04,843/- deposited by appellant on Bandwidth Service Charges. Further, there were proposal to appropriate Rs.9,38,083/-. Service tax and interest on the same amounting to Rs.4,63,867/- deposited by the appellant on "Web Hosting Services" and there was proposals to appropriate said amount against the demand of service tax of Rs.17,35,326/-. Further, there was a proposal of imposition of penalty on the appellant under Section 78 of Finance Act, 1994. On contest, the issue was adjudicated through Order-in-Original dated 30.12.2013 wherein the demands were confirmed, proposed amounts were appropriated and equal amount of penalty under Section 78 of Finance Act, 1994 was imposed. Aggrieved by the said order, appellant preferred appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) decided the appeal through the impugned Order-in-Appeal dated 11.02.2015 wherein he has held that "Web Hosting Service" were introduced w.e.f. 16.05.2008. Therefore, he has held that demand of service tax of Rs.7,97,243/- raised on "Web Hosting Service" for the period from 2007-08 was not sustainable. However, the learned Commissioner (Appeals) did not interfere with the penalty imposed under Section 78 of the Finance Act, 1994. Therefore, appellant is in appeal before this Tribunal.

3. Heard the learned authorized representative for appellant. She has submitted that out of demand of Rs.17,35,326/-, a demand of Rs.7,97,243/- was held to be unsustainable by learned Commissioner (Appeals). Therefore, demand on “Web Hosting Service” remains to Rs.9,38,083/- which was paid by them before issuance of show cause notice along with appropriate interest. Further, reverse charge service tax on Bandwidth Charges was also paid by them along with interest before issuance of show cause notice. Therefore, the issue of show cause notice was not authorized under the provisions of Sub-section (3) of Section 73 of Finance Act, 1994. Therefore, imposition of penalty is not sustainable.

4. Heard the learned A.R. for revenue, who has agreed that the said amounts were paid before the issuance of show cause notice along with interest.

5. Having considered the submissions made by both sides and on perusal of records, we find that revenue did not have authority to issue show cause notice dated 25.03.2013 in terms of provisions of Sub-section (3) of Section 73 of Finance Act, 1994. Therefore, the question of proposal of imposition of penalty under Section 78 does not arise. Therefore, we set

aside the penalty imposed on the appellant under Section 78 of Finance Act, 1994 and allow the appeal.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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